

Cover Sheet
*Comments due by **OCTOBER 21, 2016***

COMMENTS OF
STEPHEN WHITAKER
of
Montpelier Vermont

Submitted in Docket No. 16-269-87
on October 21, 2016

Regarding

Commission's implementation of the specific statutory standards by which it is obligated to evaluate State opt-out applications

COMMENTS

15. The NPRM seeks comment on when State Governors will be required to notify FirstNet, NTIA, and the Commission if they wish to opt out of the NPSBN. Specifically the NPRM proposes to require States electing to opt out of the NPSBN to file a notification with the Commission no later than 90 days after the date they receive electronic notice of FirstNet's final proposed plan for the State. The NPRM also seeks comment *[on]* how notice should be provided and on whether an entity other than a State Governor, such as the Governor's designee should be permitted to complete this filing requirement.

COMMENT:

90 days is NOT an adequate time frame for any thorough review and assessment of the state's options nor to compare these to the proposed final State plan as provided. Vermont and New Hampshire will have new recently elected Governors who will have only recently assembled management teams/ cabinets. These are decisions with enduring impacts and many implications. Having little expectation that the timeline will be extended, casual discussions indicate that States wishing to preserve their options are now obligated by due diligence requirements, yet unfunded as SLIGP funding specifically excludes these as eligible expenses, to do the extensive planning in the interim in order to compile the necessary information of alternatives to adequately inform any opt-in/out decision. More time would be better, as would relaxed SLIGP allowable expense rules.

A Governor's designee, formally appointed, should be allowed to complete the filing requirement by courier, certified letter or authenticated email, though not by telephone.

16. The NPRM seeks comment on the Act's provision that States choosing to opt out have 180 days to "develop and complete" requests for proposals (RFPs). In particular, the NPRM seeks comment on what showing is sufficient to demonstrate that a State has "completed" its RFP within the 180-day period. The NPRM further proposes that, if a State notifies the Commission of its intention to opt out of the NPSBN, the State will have 180 days from the date it provides such notification to submit its alternative plan to the Commission. The NPRM proposes to treat a State's failure to submit an alternative plan within the 180-day period as discontinuing that State's opt out process and forfeiting its right to further consideration of its opt-out request. The NPRM seeks comment on what an opt-out State should be required to include in its alternative plan for the plan to be considered complete for purposes of the Commission's review.

COMMENT:

180 days is only adequate time to complete an RFP process if a State has already completed evaluation of the FirstNet State Plan and evaluation of and comparison of any alternative plans, including those of adjoining states as described in the prior and subsequent comment.

17. The NPRM seeks comment on whether States should be required to file their alternative plans in PS Docket No. 16–269, and the scope and types of information that must be included in the submission. The NPRM also seeks comment on whether States should be allowed to file amendments or provide supplemental information to the plan once it is filed with the Commission and prior to the Commission’s decision.

COMMENT:

Alternative plans should include complete inventory of radio tower and building mounted antennae sites; propagation analysis, both modeled and measured; backhaul diversity and failover analysis; backup power design and locations, refueling protocols, security, monitoring and reporting as well as incident reporting protocols.

States should be allowed to file amendments and supplemental information absolutely.

✧ Should Commission staff be permitted to discuss or seek clarification of the alternative plan contents with the filer?

✧ **COMMENT: Yes**

✧ If a plan is deemed sufficient for our purposes before a State awards a contract pursuant to its RFP, should the Commission condition approval on substantial compliance with the approved plan under the awarded contract, or should this be addressed by NTIA under its “ongoing” interoperability evaluation?

✧ **COMMENT:**

The ongoing NTIA interoperability analysis is an appropriate venue to address changes and improvements over time to assure that same do not create additional vulnerabilities.

18. The NPRM also seeks comment on who should have access to and the ability to comment on State alternative plans. In this regard, the NPRM seeks comment on the

extent to which State alternative plans may contain confidential, competitive, or sensitive information or information that implicates national security.

COMMENT:

Comprehensive analysis is required as to what limited subset of information is included in State plans which might implicate or potentially compromise national , state or systems security. Over-classification and secrecy works at cross purposes with the need for and mandate to engage the public and emergency responder community in the planning process as well as in the vigilance of these people on the ground. Overzealous or ill considered classification or new exemptions from public disclosure as to the locations and relevance of clearly visible communications infrastructure results in a disengagement of the very people whose watchful eyes and willingness to participate in the reporting of suspicious activity is, in the end, our best protection and an appropriate security strategy. This delineation task in Vermont is best done by the Vermont Public Service Board, whose quasi-judicial forum conducts public investigations, accepts pre-file testimony, holds hearings and cross examination of expert witnesses under oath, reviews and approves protective agreements, conducts in camera reviews when necessary and issues and enforces binding orders with regard to all activities of regulated telecommunications carriers serving Vermont.

- ⤴ Should State plans be treated as confidential, with public notice limited to identifying which States have elected to opt out and filed an alternative plan?

⤴ **COMMENT:**

No

- ⤴ If so, should the Commission require such filing, and should the public be given an opportunity to comment on them?

⤴ **COMMENT:**

Unless the plans are publicly available, potentially with very limited redactions, allowing opportunity for public comment is meaningless as there is insufficient information available to inform any public comments.

- ⤴ If State plans were filed publicly, would the Commission's existing rules allowing parties to request confidential treatment for their filings provide adequate protection of sensitive information?

✧ **COMMENT:**

I am insufficiently familiar with the Commission's existing rules to provide informed comment on this question.

- ✧ Alternatively, given the likelihood of sensitive information and the limited scope of the Commission's review of State plans under section 6302(e)(3)(C)(i) of the Act, should the Commission limit the parties that are entitled to review and comment on such plans?

✧ **COMMENT:**

No. Being an informed public participant in many telecommunications planning and emergency calling system design and oversight proceedings in Vermont, I can attest that there is great value in many points of view analyzing the strengths and weaknesses of systems and procedures. One should never underestimate the value of fresh eyes and common sense, frequently lost or diminished within a local or federal bureaucracy.

- ✧ Should comment be limited to specific issues?

✧ **COMMENT:**

Possibly. If certain aspects are already set in stone or non-negotiable for interoperability or security reasons, there is no need in cluttering the record with extraneous comments. Conversely, allowing same may identify important and not yet considered issues or solutions.

19. The NPRM also seeks comment on whether FirstNet and/or NTIA should be allowed access and the ability to comment to the Commission on State plans within a defined comment period.

COMMENT: Yes. This may serve to resolve issues and result in better plans.

- ✧ Assuming that FirstNet and NTIA are afforded a right to comment on State plans, should States have the right to respond to such comments?

✧ **COMMENT:**

Yes. This could resolve issues in light of the amend and revise comments above.

- ⤴ What rights, if any, should States have to review or comment on alternative plans submitted by other States?

⤴ **COMMENT:**

The alternative State plans should be available widely in the most transparent manner possible. The right to comment might logically be limited to the plans of neighboring states as regards their impacts on the commenter's own state's plan.

- ⤴ What other procedures are appropriate for the Commission's review of such plans?

⤴ **COMMENT:**

No comment

- ⤴ How can the Commission most appropriately ensure that it has heard all “evidence pertinent and material to the decision”?

⤴ **COMMENT:**

The comment on this is already addressed above.

20. The NPRM proposes that each alternative plan submitted to the Commission should receive expeditious review. The NPRM proposes to establish a “shot clock” for Commission action on alternative plans to provide a measure of certainty and expedience to the process. The NPRM seeks comment on what an appropriate shot clock period would be.

COMMENT:

Seven days response period at each stage of the back and forth, provided such revisions are allowed. Thirty (30) days is appropriate for review and comment on neighboring states' plans.

21. The NPRM seeks comment on the standard against which alternative State plans will be evaluated, specifically with respect to the Act's requirements that alternative plans demonstrate: (1) that the State will be in compliance with the minimum technical interoperability requirements developed under section 6203, and (2) interoperability with the nationwide public safety broadband network.

COMMENT:

No Comment

22. Under the first prong, the NPRM seeks comment on the utilization of RAN-related requirements specified in the minimum technical interoperability requirements. Specifically, the NPRM proposes that review under this prong would include requirements (1)–(3), (7)–(10), (20)–(25), (29), (39), (41)–(42) from the Board Report, as documented in Appendix B of the NPRM.

COMMENT:

No Comment

23. Under the second prong, the NPRM proposes a broader view than the first prong in demonstrating “interoperability” with the NPSBN, but still limited to the RAN. In particular, the NPRM seeks comment on the role of the Commission to independently and impartially evaluate whether alternative plans comply with the interoperability-related requirements established by FirstNet, and suggests that the Commission does not have the ability to impose network policies or interoperability requirements on FirstNet.

COMMENT:

The Commission's long running experience and diligent staff, as well as the back-stop role of public safety communications oversight can well serve to both protect and support FirstNet's natural evolution and emerging capacity to conduct such reviews.

24. The NPRM seeks comment on the view that if the Commission disapproves a plan, the opportunity for a State to conduct its own RAN deployment will be forfeited and FirstNet “shall proceed in accordance with its proposed plan for that State.”

COMMENT:

It is both unwise and counterproductive to unnecessarily wield the heavy-hand when the goal is to build both local and national capacity to build, manage and oversee such a complex, first of its kind, national, interoperable infrastructure.

25. The NPRM seeks comment on the view that the Commission’s approval of a State opt-out plan as meeting the interoperability criteria in section 6302(e)(3)(C) of the Act would not create a presumption that the State plan meets any of the criteria that NTIA is

responsible for evaluating under section 6302(e)(3)(D) of the Act.

COMMENT:

Consistent with earlier comment, it make sense that the FCC's approval should create a rebuttable presumption that the plan meets the NTIA criteria, inferring that a goal of interagency cooperation and coordination will result in the greatest efficiency and public service, where each agency is familiar with the others' review criteria.

26. The NPRM seeks comment on how the Commission should document its decisions to approve or disapprove State opt-out requests under the statutory criteria.

COMMENT:

A written decision or order explaining the basis for each decision is warranted.

- ⬆ Should it issue a written decision or order explaining the basis for each decision, or would it be sufficient to provide more limited notice of approval or disapproval in each case without a detailed explanation?

27. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others):

- (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities;
- (3) the use of performance rather than design standards; and
- (4) an exemption from coverage of the rule, or any part thereof for small entities.

COMMENT:

Yes. This special consideration is appropriate here in Vermont and should also include similar provisions for women owned businesses.